

**United States Department of Labor  
Employees' Compensation Appeals Board**

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R.N., Appellant )

and )

DEPARTMENT OF THE NAVY, )  
CAMP LEJUENE, NC, Employer )

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**Docket No. 10-10**  
**Issued: July 6, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 24, 2009 appellant filed a timely appeal of an August 5, 2009 decision of the Office of Workers' Compensation Programs which denied his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this issue.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly denied appellant's request for a hearing.

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<sup>1</sup> Appellant indicated that he was appealing a September 15, 2008 decision. For Office decisions issued prior to November 19, 2008, a claimant had up to one year to file an appeal. 20 C.F.R. § 501.3(d) (2008). An appeal of Office decisions issued on or after November 19, 2008 must be filed with 180 days of the decision. 20 C.F.R. § 501.3(e) (2009). See 73 Fed. Reg. 62,190 (October 20, 2008). As the appeal was postmarked on September 24, 2009, the Board lacks jurisdiction over the September 15, 2008 decision.

## **FACTUAL HISTORY**

On January 16, 2002 appellant, then a 42-year-old water plant operator, filed a traumatic injury claim, alleging that on that same date, he hit his left knee on the tail gate of his vehicle while in the performance of duty. He stopped work on January 16, 2002 and returned to work on that same date. The Office accepted the claim for traumatic arthritis of the left knee and aggravation of patella femoral arthritis.

Appellant subsequently requested a schedule award and, in a September 15, 2008 decision, the Office granted appellant a schedule award for 25 percent permanent impairment of the left leg (less the 20 percent previously awarded for the same leg under a separate claim).

On December 4, 2008 appellant requested a hearing. He contacted the Office on several occasions from March 23 to July 30, 2009 to inquire into the status of his hearing request.

In a decision dated August 5, 2009, the Office found that appellant was not entitled to a hearing as his request was not made within 30 days of the September 15, 2008 decision. It exercised its discretion and determined that it would not grant a hearing as the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence not previously considered pertaining to his claim for a schedule award.

## **LEGAL PRECEDENT**

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.<sup>2</sup>

Section 10.615 of Title 20 of the Code of Federal Regulations provides, "A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record."<sup>3</sup>

Section 10.616(a) of Title 20 of the Code of Federal Regulations further provides, "A claimant injured on or after July 4, 1966, who had received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought."<sup>4</sup>

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<sup>2</sup> 5 U.S.C. § 8124(b)(1).

<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Id.* at § 10.616(a).

The Office's regulations provide that a request received more than 30 days after the Office's decision is subject to the Office's discretion<sup>5</sup> and the Board has held that the Office must exercise this discretion when a hearing request is untimely.<sup>6</sup>

### ANALYSIS

Appellant requested a hearing on December 4, 2008. The Board notes that the request for a hearing was more than 30 days after the Office issued its September 15, 2008 decision. Because appellant did not request a hearing within 30 days of the September 15, 2008 decision, he was not entitled to a hearing as a matter of right.

The Office properly exercised its discretion in denying a hearing upon appellant's untimely request by determining that the issue could be equally well addressed by requesting reconsideration and submitting new evidence regarding his schedule award claim.

The only limitation on the Office's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are contrary to logic and deductions from known facts.<sup>7</sup> There is no evidence of record that the Office abused its discretion in denying appellant's requests for a hearing under these circumstances.

On appeal, appellant advised that he was "no better than his last evaluation" and continued to worsen, such that he had to walk with a cane. The Board notes that the issue of his schedule award is not presently before the Board.<sup>8</sup> The Board only has jurisdiction to address whether the Office properly denied appellant's request for a hearing.

### CONCLUSION

The Board finds that the Office properly denied appellant's request for a hearing.

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<sup>5</sup> *Id.* at § 10.616(b).

<sup>6</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).

<sup>7</sup> *See Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>8</sup> *See supra* note 1. The Board notes that appellant retains the right to file a claim for an increased schedule award based on new exposure or on medical evidence indicating that the progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 5, 2009 is affirmed.

Issued: July 6, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board